REMARKS

This Response is in reply to the Office Action mailed March 21, 2008. Claims 1-81 were pending in the application. Claims 1-69 and 77 were rejected, and claims 70-76 and 78-81 were withdrawn.

Claims 1-9, 13-26, 30-43, 47-58, 61-69, and 77 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,415,659 (hereinafter Lee). Lee discloses a pedicle clamp body 22 with three hooks that act in concert to releasably attach to a selected vertebra. Multiple clamp bodies 22 can be attached to different vertebrae. An elongated plate 90 is connected to the clamp bodies 22 with an intermediate member 20 positioned between the bodies 22 and the plate 90. The plate 90 and members 20 are positioned on lateral sides of the spinous processes and do not contact the spinous processes.

Claims 1-6 are canceled and rejections to these claims are now moot.

Claim 7 has been amended to now include that the first end of the brace contacts an inferior surface of the spinous process of the L5 vertebrae. The brace and base are connected together with a distance measured between contact surfaces of the first end of the brace and the flange defining a minimum distance between a lamina of the S1 vertebra and a spinous process of the L5 vertebra. Further, Lee does not disclose that the contact surfaces on the plate 90 or member 20 and the body 22 define a minimum distance between lamina of an S1 vertebra and the inferior surface of the spinous process of an L5 vertebra.

For at least these reasons, independent claim 7 is not anticipated by Lee.

Claim 8 has been canceled.

Claim 9 has been amended to now include the brace has a distal end on the major axis adapted for contacting an inferior surface of a spinous process of the L5 vertebra during extension of the spine. Lee does not disclose either the plate 90 or the member 20 contacting the inferior surface of the spinous process. Further, Lee includes a pair of bodies 22 that are

engaged with adjacent vertebra. This structure does not allow either the plate 90 or member 20 to engage the inferior surface of the spinous process during extension of the spine.

For at least these reasons, independent claim 9 and dependent claims 13-16 and 21-24 are not anticipated by Lee and are in condition for allowance.

Claims 17-18 and 20 have been canceled.

Claim 26 has been amended to now include at least one hook that extends from the body and includes a first contact surface that faces in an inferior direction, a brace that includes a distal end with a second contact surface that faces in a superior direction, and a device that secures the elongated section to the body and positions the second contact surface to contact an inferior surface of a spinous process of a second vertebra positioned superior of the first vertebra during extension of the vertebrae. The plate 90 and member 20 of Lee do not extend outward from the bodies 22 in a manner that would allow contact with a spinous process of a superior second vertebra during extension.

For at least these reasons, independent claim 26 and dependent claims 30-42 are not anticipated by Lee and are in condition for allowance.

Claim 43 has been amended to now include a notch formed by the body between medial edges of the first and second portions and an anterior surface of the platform. The notch is sized to extend over a midline of the S1 vertebra when the body is attached to the S1 vertebra. The first and second hooks are spaced apart to engage with the S1 vertebra on opposite lateral sides of the midline of the S1 vertebra. Further, the curved surface of the distal end of the brace contacts an inferior surface of a spinous process of the L5 vertebra. The bodies 22 of Lee do not include a notch with first and second portions and a platform. The bodies 22 do not attach to the S1 vertebra such that the notch extends over a midline of the S1 vertebra. The hooks on the bodies 22 are not positioned on opposite lateral sides of the midline of the S1 vertebra.

Further, the plate 90 and member 20 of Lee do not contact an inferior surface of the spinous process.

For at least these reasons, independent claim 43 and dependent claims 47-56 are not anticipated by Lee and are in condition for allowance.

Claim 57 has been canceled. Claims 50-54 have been amended to conform to the amendments to independent claim 43.

Claim 58 has been amended to now include the brace has a first end on the major axis positioned to contact an inferior surface a spinous process of a second vertebra when implanted. The plate 90 and member 20 of Lee do not contact an inferior surface of the spinous process.

For at least these reasons, independent claim 58 and dependent claims 61-64 and 66-69 are not anticipated by Lee and are in condition for allowance.

Claim 77 has been amended to now include that the device that connects the beam to the body secures the brace to the body and positions the curved surface outward from the body to contact the inferior surface of the spinous process of the second vertebra during extension of the vertebrae. Lee does not position the plate 90 or the member 20 in this manner.

For at least these reasons, independent claim 77 is not anticipated by Lee and is condition for allowance.

Claims 10-12, 27-29, 44-46 and 59-60 were rejected under 35 USC 103(a) as being unpatentable over Lee. Claims 10-12 depend from claim 9 and are not obvious for at least the reasons stated above for independent claim 9. Claims 27-29 depend from claim 26 and are not made obvious for at least the reasons stated above for independent claim 26. Claims 44-46 depend from independent claim 43 and are not made obvious for least the reasons stated above for independent claim 43. Claims 59-60 depend from independent claim 58 and are not made obvious for at least the reasons stated above for independent claim 58.

Claims 27, 28, 44 and 45 have each been amended to correct the improper capitalization of the word "at".

New claims 82-85 have been added. Claim 82 depends from claim 9 and includes that the distal end includes a convex surface that is curved in an anterior-posterior direction and extends within a median plane of the implant. Claim 83 depends from claim 26 and includes the second contact surface has a convex surface that extends within a median plane of the implant. Claim 84 depends from claim 26 and includes the second contact surface includes a convex surface that is curved in an anterior-posterior direction. Claim 85 depends from claim 43 and includes the distal end includes a convex surface that extends in a median plane of the implant. Each of these claims includes different structure from Lee that includes the convex surfaces that are aligned in a lateral direction.

In view of the above amendments and remarks, the Applicant submits the application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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Dated: June 23, 2008

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